United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/894
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 894

Cases No. 820: MANSOUR
No. 880: MANSOUR

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Deborah Taylor Ashford, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Victor Yenyi Olungu;

Whereas, on 2 April 1997, Khalil Mohammed Mansour, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 September 1997, the Applicant, after making the necessary corrections, again filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 777, rendered by the Tribunal on 21 November 1996, and an order for production of certain documents;

Whereas the Respondent filed his answer on 5 February 1998;

Whereas the Applicant filed written observations on 4 May 1998;

Whereas, on 2 and 27 July 1998, the Applicant submitted additional documents;

Whereas, on 27 July 1998, the Tribunal put questions to the Applicant, to which he

provided answers on 31 July 1998;

Whereas, on 11 August 1998, the Tribunal informed the parties that it had decided to adjourn consideration of the case until its next session;

Whereas, on 11 August 1998, the Tribunal put further questions to the Applicant to which he provided answers and submitted additional documents on 4 September 1998;

Whereas, on 15 September 1998, the President of the Tribunal requested the Respondent to provide his comments on the Applicant's submissions, which he did on 23 September and 1 October 1998;

Whereas, on 8 October 1998, the Applicant submitted a response to the Respondent's 1 October 1998 comments;

Whereas, on 28 October 1998, the Tribunal requested the Respondent and the Applicant to produce certain documents, which they did on 5 November and 6 November 1998, respectively;

Whereas the facts in the cases have been set forth in Judgement No. 777.

Whereas the Applicant's principal contentions are:

1. The Tribunal misstated the sequence of events and therefore overlooked the causal link between the Applicant's criticisms of the quality of batteries and retreads, on the one hand, and the deferrals of the Applicant's salary increments and his termination, on the other.

2. The Tribunal should have ordered the Respondent to produce certain documents that would have established the causal link between the Applicant's criticisms and the actions taken against him.

Whereas the Respondent's principal contention is:

The application for revision does not comply with the conditions of article 11 of the Tribunal's Statute for the revision of a judgement and thus should be rejected. The

Applicant has failed to identify any newly discovered fact of a decisive nature that was unknown to the Tribunal and to the Applicant when the judgement was given.

The Tribunal, having deliberated from 7 to 31 July 1998 in Geneva, and from 27 October to 20 November 1998 in New York, now pronounces the following judgement:

I. The Applicant brought his two cases before the Tribunal for the first time in 1994 and 1995, respectively. They were considered and decided by the Tribunal in its Judgement No. 777 rendered on 21 November 1996. The Applicant now presents an application requesting a revision of Judgement No. 777 under article 11 of the Tribunal's Statute.

II. The Tribunal, in its Judgement No. 303, Panis (1983), paragraph I, stated:

> "Applications for revision of a judgement delivered by the Tribunal must be considered in the light of the standards imposed by article 12 [now article 11] of the Tribunal's Statute. That article enables the Secretary-General or the Applicant to 'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...' ... The standards contained in article 12 [now article 11] are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

(Cf. also Judgement No. 460, Shatby (1989)). Under its Statute, the Tribunal's powers of revision of a judgement are strictly limited and may be exercised only upon compliance with the conditions set forth in article 11. No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation.

III. In his original cases before the Tribunal, the Applicant had claimed, among other things, that his annual increment was improperly deferred and that he was improperly terminated after criticizing his supervisors. The Tribunal, after examining the entire record, held that the Applicant's claims were unfounded. The Applicant now alleges that in rendering Judgement No. 777, the Tribunal did not have access to documents and facts that would have proven that his termination was due to prejudice against him.

IV. In this instance, the Tribunal ordered production of those documents requested by the Applicant that the Tribunal deemed to be potentially relevant. The Tribunal has reviewed those documents and finds that they do not include any evidence "of such a nature as to be a decisive factor" which was unknown at the time Judgement No. 777 was rendered.

V. For the foregoing reasons, the Tribunal rejects the Applicant's pleas in their entirety.

(Signatures)

Deborah TAYLOR ASHFORD
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Victor YENYI OLUNGU
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary